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CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 96.

WILLIAM F. BOISSEORIE, HENRY McMORRAN, AND T. E. WRIGHT, APPELLANTS,

vs.

PATRICK SHEA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED MAY 16, 1900.

(18,161.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 98.

WILLIAM F. BOTSFORD, HENRY McMORRAN, AND T. R. WRIGHT, APPELLANTS,

vs.

PATRICK SHEA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 23, 1902.

1 In the United States Circuit Court of Appeals for the Seventh Circuit.

WILLIAM F. BOTSFORD, HENRY MCMORRAN, and T. R. Wright, Appellants, vs. PATRICK SHEA.	No. 529. In Admiralty.

In this case, duly argued and submitted to this court, there arise questions of law concerning which this court desires the instruction and advice of the Supreme Court of the United States.

The appellee, Patrick Shea, exhibited his libel in the district court of the United States for the eastern district of Wisconsin, against the steam propeller Osceola, her tackle, apparel and furniture, to recover damages for personal injuries sustained under the circumstances herein stated.

At the hearing below, the district court pronounced for the libellant awarding him damages for the injury sustained, and from the decree of that court in that behalf, the respondents below, the owners of the vessel, have appealed to this court.

The owners had supplied the vessel with a movable derrick for the purpose of raising the gangways of the vessel when in port, in order to discharge cargo. The appliance was in every respect fit and suitable for the purpose for which it was intended and furnished to be used, and at the time of the injury was in good repair

2 and condition. The gangways which were to be raised by the derrick were each about ten feet long lengthwise of the ship, about seven feet high and weighed 1050 pounds. In the month of December, 1896, the vessel was on a voyage bound for the port of Milwaukee, and when within three miles of that port, and while in the open lake, the master of the vessel ordered the forward port gangway to be hoisted by means of the derrick, in order that the vessel might be ready to discharge cargo immediately upon arrival at her dock. At this time the vessel was proceeding at the rate of eleven miles an hour against a head of wind of eight miles an hour. Under the supervision of the mate, the crew, including the appellee Patrick Shea, who was one of the crew, proceeded to execute the order of the master. The derrick was set in place to raise the gangway. As soon as the gangway was swung clear of the vessel, the front end was caught by the wind and turned outward broadside to the wind and by the force of the wind was pushed aft and pulled the derrick over, which in falling struck and injured the libellant. The negligence, if any there was, consisted solely in the order of the master that the derrick should be used and that the gangway should be hoisted while the vessel was yet in the open sea when the operation might be impeded and interfered with by the wind. The mate and the crew in executing the orders of the mas-

ter of the vessel, acted in all respects properly, and were guilty of no negligence in the performance of the work. The libel charged negligence upon the owners of the vessel in "requiring and permitting the work of unshipping said gangway to be done while said vessel was at sea and running against the wind." The owners were not present upon the vessel, nor was the master a part owner of the vessel. It is contended that the vessel and its owners are liable for every improvident or negligent order of the captain in the course of the navigation or management of the vessel.

The questions of law upon which this court desires the advice and instruction of the Supreme Court, are—

First. Whether the vessel is responsible for injuries happening to one of the crew by reason of an improvident and negligent order of the master in respect of the navigation and management of the vessel.

Second. Whether in the navigation and management of a vessel, the master of the vessel and the crew are fellow-servants.

Third. Whether as a matter of law the vessel or its owners are liable to the appellee, Patrick Shea, who was one of the crew of the vessel, for the injury sustained by him by reason of the improvident and negligent order of the master of the vessel in ordering and directing the hoisting of the gangway at the time and under
3 the circumstances declared; that is to say, on the assumption that the order so made was improvident and negligent.

These questions the court on this day orders certified and submitted to the Supreme Court of the United States for its proper decision.

WILLIAM A. WOODS.
JAMES G. JENKINS.

November 8, 1899.

4 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 3, inclusive, contain a true copy of the order of the United States circuit court of appeals for the seventh circuit, entered November eighth, 1899, certifying to the Supreme Court of the United States questions of law concerning which it desires the instructions of that court for its proper decision, in the case of William F. Botsford, Henry McMorran and T. R. Wright *vs.* Patrick Shea, No. 529, October term, 1898, as the same remains *remains* upon the files and records of the United States circuit court of appeals, for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this thirteenth day of November, A. D. 1899.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: File No. 18,161. U. S. C. C. of appeals 7th circuit. Term No. 98. William F. Botsford, Henry McMorran and T. R. Wright, appellants, *vs.* Patrick Shea. (Certificate.) Filed May 13, 1901.